

# EXHIBIT 5



September 2, 2019

Hon. James C. Justice, II  
Governor  
State of West Virginia  
1900 Kanawha Boulevard E.  
Charleston, West Virginia 25305

Via Personal Delivery & E-Mail

Re: Preserving Healthcare and Jobs in the Upper Ohio Valley

Dear Governor Justice,

We are writing to seek your assistance in preserving access to healthcare in the Upper Ohio Valley and more than 750 jobs at Ohio Valley Medical Center ("OVMC"). While we understand that you have met with Congressman McKinley and representatives of WVU Medicine to discuss OVMC, we have not been offered the opportunity to meet with you, despite requests to do so, to discuss the future of OVMC and how access to healthcare and jobs at OVMC can be saved. As such, we are writing this letter to provide you with additional background regarding OVMC, our efforts to save OVMC, and explain how the State of West Virginia can help preserve access to healthcare in the Upper Ohio Valley and preserve 750+ jobs at OVMC. As discussed below, the "plan" being discussed by WVU Medicine's leadership will not "ensure that top-of-the line health care remains available to the everyone in the Ohio Valley and that our great medical professionals continue to have every opportunity in the world." Rather, the solutions discussed below provide a better plan for the community as they will preserve access to healthcare and the 750+ jobs at OVMC. We urge you to pursue these solutions not the "band aid" being proposed by WVU Medicine.

**1. Background**

OVMC is a 218-bed acute care hospital with a full-service emergency department, medical/surgical services, and the Upper Ohio Valley's only inpatient psychiatric services for adults, adolescents, and children. OVMC's Emergency Department, which is staffed by Board Certified Emergency Medicine Physicians, sees more than 24,000 patients per year, more than 3,500 patients are admitted each year for medical and surgical care, and more than 1,800 patients, many of which are children and adolescents, are admitted to OVMC for inpatient psychiatric care each year. OVMC has more than 750 dedicated employees who strive to provide excellent care to all members of the community.

OVMC, along with East Ohio Regional Hospital in Martins Ferry, Ohio ("EORH"), was historically operated by Ohio Valley Health Services and Education Corporation ("OVHS&E"), a West non-profit corporation. Over the past fifteen (15) years, OVHS&E, OVMC, and EORH faced significant pressure as a result of Wheeling Hospital's and its for-profit manager's efforts to cause the closure of OVMC and EORH. By the end of 2016, OVHS&E, OVMC, and EORH were in a crisis as they were in default under their \$40M loan with Opus Bank, were substantially

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past due with vendors and other providers, and there was a significant risk that OVMC and/or EORH would be forced to close. As such, OVHS&E began searching for a strategic partner or buyer. This search ultimately led to an asset purchase agreement with Alecto Healthcare Services Wheeling LLC (“Alecto Wheeling”) and Alecto Healthcare Services Martin’s Ferry (“Alecto Martin’s Ferry”) pursuant to which Alecto Wheeling and Alecto Martin’s Ferry agreed to pay \$40 M to OVHS&E and to assume substantially all of OVHS&E’s and OVMC’s liabilities. This structure allowed OVHS&E, OVMC, and EORH to avoid a bankruptcy and allowed creditors to be paid more than \$17M. Alecto Wheeling and Alecto Martin’s Ferry financed the purchase with a \$40M sale/leaseback transaction with Medical Properties Trust (“MPT”) and additional financing.

Alecto Wheeling and Alecto Martin’s Ferry completed the purchase of OVMC and EORH was completed on June 1, 2017.

## **2. Challenges Faced by OVMC and EORH**

After acquiring OVMC and EORH, Alecto Wheeling and Alecto Martin’s Ferry undertook substantial efforts to turn the hospitals around and provided millions of dollars in funding to OVMC and EORH as they struggled to overcome the challenges facing them including, without limitation:

- Declining patient volumes as health plans and insurance companies steered patients away inpatient hospital stays, Wheeling Hospital and its for-profit manager spreading misinformation about OVMC and EORH, and Wheeling Hospital recruiting physicians away from OVMC with above-market compensation packages such as those challenged by the United States in *United States of America ex. rel. Louis Longo v. Wheeling Hospital, Inc., R & V Associates, LTD., and Ronald L. Violi*, United States District Court for the Northern District of West Virginia Case No. 5:19-cv-00192-JPB. For example, Wheeling Hospital’s staff repeatedly and falsely told patients in its emergency department that OVMC did not accept Medicare or Medicaid and that patients could not be transferred to OVMC even though the wait to see a physician was hours shorter at OVMC and OVMC’s emergency department was staffed by board certified emergency medicine physicians;
- Increasing payroll expenses as Wheeling Hospital recruited staff away with promises of extra shift bonuses paid by gift cards (and not taxable) rather than by normal payroll processed which would be subject to taxes payable to the State of West Virginia. An audit will likely reveal that Wheeling Hospital’s use of gift cards in lieu of payroll caused the State of West Virginia to lose substantial amounts in taxes that would otherwise have been paid;
- The substantial harm caused by the conduct alleged by the Government in *United States of America ex. rel. Louis Longo v. Wheeling Hospital, Inc., R & V Associates, LTD., and Ronald L. Violi*, United States District Court for the Northern District of West Virginia Case No. 5:19-cv-00192-JPB;
- Payment delays from Molina Medicaid, the contractor who administers West Virginia’s Medicaid Program, and other health plans and insurance companies. As of the date of

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this letter, OVMC has more than \$1.5M in outstanding claims for services provided to West Virginia Medicaid beneficiaries; and

- West Virginia's inefficient supplemental payment program (the "DPP Program") which requires hospitals to wait months after submitting their payments to the State to receive supplemental payments back from the State of West Virginia. As of the date of this letter, OVMC is waiting to receive \$1,064,843 in DPP payments for the quarter ending March 31, 2019, \$1,064,843 in DPP payments for the quarter ending June 30, 2019, and also expects to receive \$1,064,843 in DPP payments for the quarter ending September 30, 2019. In contrast to West Virginia, hospitals in Ohio receive supplement payments back from the State of Ohio within 4 weeks of submitting the initial payment.

As a result of these struggles as well as the payment of more than \$17 Million to creditors (who would have received nothing if OVHS&E was forced to file bankruptcy), OVMC and EORH lost more than \$37 Million during the past two years.

### **3. Unsuccessful Efforts to Find Strategic Partner**

After a year of struggling to overcome the challenges they faced, OVMC and EORH began searching for strategic partners and/or buyers. This search involved discussions with large national systems, regional systems, and local hospitals. OVMC and EORH engaged in discussions with more than 15 different prospective partners/buyers including UPMC and WVU Medicine. With respect to WVU Medicine, OVMC and EORH began discussions with WVU Medicine's executives in January 2019 about acquiring OVMC and/or EORH and continue these discussions today. Despite their exhaustive efforts, OVMC and EORH were unsuccessful in locating a strategic partner or buyer for either OVMC or EORH. We understand that the plan being worked on by WVU Medicine leadership involves leasing the two buildings in which the psychiatric beds are located for only 12 months but does nothing to address the acute services, including the 24,000 emergency department visits at OVMC each year, the 14,000 emergency department visits at EORH each year, or the 750+ jobs at OVMC.

### **4. Meeting with DHHR**

Faced with ongoing losses and the possibility that one or both of the hospitals may need to close, OVMC and EORH's representatives met with Secretary Bill Crouch on July 15, 2019 to explain the extreme distress that both OVMC and EORH were under, the efforts to secure a buyer for one or both of the hospitals, discussions with WVU Medicine, and the very real possibility that OVMC and/or EORH could close in the coming weeks. While Secretary Crouch listened to OVMC's and EORH's representatives, he did not offer any solutions and did not seem overly concerned about the closure of OVMC and the loss of the jobs associated with such a closure.

### **5. Closure Announcement**

On August 7, 2019, after our meeting with Secretary Crouch and providing advance notice to West Virginia's Office of Healthcare Facility Licensure and Certification and Ohio's Department of Health, OVMC and EORH announced that they would begin the process to close both hospitals while searching for buyers at the same time. Since making this announcement, OVMC and EORH



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have continued to operate both hospitals and care for the community and search for a solution to save OVMC and/or EORH.

**6. Meetings with Local Elected Officials and Community Leaders**

In yet another effort to save OVMC and EORH, OVMC's executives met with more than 15 elected officials at the state and local levels and community leaders on August 19, 2019, to discuss the importance of OVMC and EORH to healthcare in the Upper Ohio Valley, OVMC's critically needed psychiatric services, and what could be done to avoid the closure of OVMC and EORH. As part of these discussions, OVMC and EORH provided the elected officials with a solution, outlined below, which would save OVMC and generate positive income for WVU Medicine and/or Wheeling Hospital. We understand that many of these elected officials shared their concern for OVMC with your office as well.

**7. Congressman McKinley's Efforts to Save OVMC**

Immediately after OVMC and EORH announced that they were beginning the closure process, Congressman McKinley jumped into action to save OVMC. Congressman McKinley and his staff have had numerous telephone calls and meetings with OVMC's executives and representatives, gathered financial and operational data regarding OVMC, sought solutions from OVMC and Alecto Healthcare, and sought support from you and WVU Medicine. In response to Congressman McKinley's inquiries, OVMC and Alecto also provided Congressman McKinley with information regarding OVMC, a solution that would save OVMC and its 750+ jobs, and a model whereby WVU Medicine could operate both OVMC and EORH at a profit.

While we were not invited to attend the meeting, we understand that Congressman McKinley also met with you, your staff, and representatives of WVU Medicine on August 20, 2019 to discuss ways in which OVMC and its 750+ jobs could be saved. We understand that you suggested that the State provide funding to buy OVMC and have WVU Medicine run the hospital. Upon learning of your suggestion, we provided the State and WVU Medicine with access to OVMC and sought to identify the individual or individuals from your office who would be responsible for negotiating the purchase of OVMC from MPT. We took immediate steps to identify the person or persons who would be responsible for negotiating the purchase from MPT as we understood time was of the essence and wanted to make sure your office was immediately talking to MPT. Despite our requests, it was not until August 27, 2019 that we were advised that WVU Medicine would be taking the lead. Although we were disappointed that your office would not be taking the lead, we immediately connected WVU Medicine and MPT so substantive discussions could begin. At this point, we understand that WVU Medicine has indicated that it seeks to lease the buildings in which the psychiatric units are located for only 12 months and does not intend to operate the acute medical portion of the hospital or the emergency department. This plan will not preserve access to healthcare or save jobs at OVMC. Instead, it will further burden Wheeling Hospital's already overcrowded emergency department (we understand the wait to see a provider at Wheeling Hospital before OVMC announced its closure were as long 6-8 hours) and reward Wheeling Hospital's for engaging in the unlawful conduct alleged in the Government's complaint.

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## 8. Solutions for OVMC

Needless to say, we were disappointed to learn that WVU Medicine is only interested in operating the psychiatric units for only 12 months and that your office was apparently taking a back seat in trying to save OVMC and its 750+ jobs. If there is to be a plan that “will be in place very soon that will ensure that top-of-the line health care remains available to everyone in the Ohio Valley and that our great medical professionals continue to have every opportunity in the world” and save jobs at OVMC then we implore you to pursue the solutions described below. The solutions will preserve access to healthcare and save 750+ jobs at OVMC are:

(a) Like the State of Kentucky did to save Jewish Hospital in Louisville, the State of West Virginia (<https://www.courier-journal.com/story/news/2019/08/12/university-louisville-meeting-held-amid-jewish-hospital-pressure>) could provide WVU Medicine or another non-profit with a \$25 to \$30M loan to fund the purchase of OVMC’s real estate from MPT and support OVMC while it is operated by WVU Medicine, Wheeling Hospital, or another operator. Under this solution, OVMC would transfer the equipment and inventory at OVMC as part of the real estate purchase and WVU Medicine would simply need to hire the highly skilled workforce that already exists at OVMC. With a few modest changes and the support of WVU Medicine’s physician network, OVMC could generate enough positive income to allow for \$5M in capital expenditures each year while still generating positive income of at least \$6M each year, which could easily repay the loan. Most importantly, the community would continue to have access to healthcare and 750+ jobs would be saved.

(b) The State of West Virginia and/or WVU Medicine could lease the OVMC campus from MPT (and acquire the operations as part of the lease) for 3- 5 years at an annual lease payment of approximately \$2M per year and the State of West Virginia and WVU Medicine could use the lease term to determine how OVMC can best be used to meet the healthcare needs of the community. Despite media reports to the contrary, we understand that WVU Medicine has proposed to lease only the buildings where psychiatric services are provided and to lease them for only 12 months. This is hardly the solution that has been touted in the media.

(c) Wheeling Hospital and the Diocese could use the profits generated by Wheeling Hospital over the past several years (public reports suggest that Wheeling Hospital has had annual profits of \$30M + per year) and acquire purchase of OVMC’s real estate from MPT and OVMC’s operations under WVU Medicine or another operator. This would seem to the most equitable solution and would also promote the healing that Bishop Brennan is seeking because the problems faced by OVMC today are due in large part to conduct of Wheeling Hospital, which owned by the Diocese and for which the key leaders of the Diocese were actively aware and involved, as alleged by the Government in *United States of America ex. rel. Louis Longo v. Wheeling Hospital, Inc., R & V Associates, LTD., and Ronald L. Violi*, *United States District Court for the Northern District of West Virginia Case No. 5:19-cv-00192-JPB*.

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We urge you to act now to pursue a solution that will truly preserve access to healthcare and save the 750+ jobs at OVMC. WVU Medicine's plan will not preserve access to healthcare and save 750+ jobs. Each of the solutions outlined above, which can be quickly implemented with your leadership, will preserve healthcare and save 750+ jobs. Please let us know when we can meet with you to discuss and implement a real solution for OVMC.

Sincerely,

A handwritten signature in blue ink, appearing to read "Michael J. Sarrao", with a stylized flourish at the end.

Michael J. Sarrao  
Executive Vice-President